

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Deferral of Licensing of MTA
Commercial Broadband PCS Licensing

PP Docket No. 93-253
ET Docket No. 92-100

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

**WESTERN PCS CORPORATION'S OPPOSITION TO COMMUNICATION ONE,
INC.'S "EMERGENCY MOTION TO DEFER MTA PCS LICENSING"**

Western PCS Corporation ("WPC")^{1/}, by its attorneys, hereby opposes the "Emergency Motion to Defer MTA PCS Licensing" ("Motion") filed by Communications One, Inc. ("Comm One") on March 8, 1995.^{2/} For the following reasons, Comm One's request should be denied, and the licensing of the A/B block winners should proceed as scheduled.

Introduction

In its Motion, Comm One argues that the stay of the upcoming Entrepreneur block BTA ("C block") Broadband PCS auction, pending the resolution of a court challenge, places designated entities planning to participate in that auction at a competitive disadvantage vis-a-vis the winners of the recently completed A/B block auction. Comm One thus requests that the Commission "defer the MTA licensing process until after the Entrepreneur block auction has

^{1/} WPC was a winning bidder for six markets in the A/B Block auction.

^{2/} Previously, on March 22, 1995, WPC submitted a Motion for Extension of Time, until today, March 29, 1995, for the filing of this pleading.

been conducted."^{3/}

While WPC agrees that the designated entities deserve the opportunity to participate meaningfully in the PCS marketplace, WPC believes that delaying the licensing of the A/B block winners would not advance that objective, would be inequitable in the extreme, and would be directly inconsistent with the public interest.

Discussion

In essence, Comm One argues that the indefinite delay it requests is justifiable because of the overriding need to safeguard the participation of designated entities in PCS. However, the Commission has already considered and rejected the notion that the potential harm of the A/B block headstart overshadows the demonstrable public interest in the prompt provision of PCS service. First, a headstart of some magnitude was purposefully contemplated by the Commission in its sequencing of the PCS auctions.^{4/} Second, while the Commission noted that "auctioning the MTA blocks far ahead of the other blocks would give a head start to the winners

^{3/} Motion, p.3. Elsewhere in its pleading, however, Comm One asks that "all Broadband PCS licenses in any market area should be awarded simultaneously." Motion, p.3. Apparently Comm One believes that all six frequency blocks must be auctioned before a single license should be issued. Even without unexpected delays, it could take the Commission well over a year to complete the remaining four auctions.

^{4/} Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fourth Memorandum Opinion and Order, PP Docket 93-253, ¶ 28. In deciding to issue PCS licenses in staggered auctions, the Commission found that auctioning the entrepreneurs' block licenses after the block A and B licenses were awarded was in the best interests of designated entities because it would enable them to more easily attract financial partners. Id. at ¶ 30. The Commission reasoned that "[b]ecause the large firms that are potential partners for designated entities probably would prefer to own outright any licenses they might obtain in an auction, we think it less likely . . . that these large firms would form partnership agreements with designated entities if auctions in the restricted blocks were held before the MTA auctions." Id.

in the MTA block that would likely afford them some competitive advantage,"^{5/} the Commission specifically "decline[d] to delay finalizing the award of A and B block licenses . . . because of the overriding public interest in rapid introduction of service to the public."^{6/}

Congress has also made clear that it views the prompt introduction of PCS to the public as an overriding concern. In Section 6002 of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") which amended the Communications Act to, inter alia, provide for the use of competitive bidding to award PCS licenses, Congress directed the Commission to finalize its PCS rulemakings within 180 days of the Budget Act's enactment and to "commence issuing licenses and permits" for PCS within 270 days of enactment.^{7/}

While delaying A/B block licensing would not advance the interests of designated entities, it would impose considerable costs on the auction winners. Together, WPC and the other high bidders have submitted initial and down payments totalling over 1.4 billion dollars.^{8/} These funds are not generating interest while on deposit with the Commission, and represent a sizable amount of capital which would otherwise be available for alternative investment. Comm One's suggestion that the Commission is precluded by the Budget Act from considering the fact that it has already collected more than a billion dollars is legally unsupportable. The Communications Act, as amended by the Budget Act, precludes the Commission from deciding

^{5/} Id. at ¶ 32.

^{6/} Id.

^{7/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (1993), § 6002(d)(2).

^{8/} Public Notice, Report No. 52905 (Released March 21, 1995). WPC has itself paid over \$28,000,000.

whether or not to hold an auction based solely on financial considerations.^{2/} Here the auction has already been held. A stay of the A/B block licensing only punishes the public and the winners with no countervailing benefit to designated entities.

In addition to the money spent on deposits and downpayments, WPC and the other winners have invested significant time and resources over a period of many months in reliance on the established licensing procedures and schedule. In WPC's case, the tasks of clearing microwave, coordinating with Mexico, and building hundreds of cell sites will be daunting. WPC is committed to accomplishing these tasks at the earliest possible date. Fairness and the public interest dictate that the rules of the game not be changed after the fact to the detriment of the auction winners and the public they seek to serve.

Conclusion

For the foregoing reasons, Comm One's Motion should be denied, and the licensing of the MTA A and B frequency block winners should proceed as scheduled.

Respectfully submitted,

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March 29, 1995

^{2/} Communications Act of 1934 § 309(j)(7)(A), 47 U.S.C. § 309(j)(7)(A).

CERTIFICATE OF SERVICE

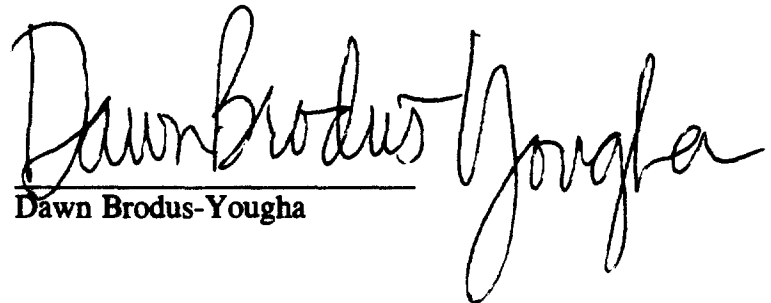
I, Dawn Brodus-Yougha, a secretary in the law firm of Gurman, Kurtis, Blask & Freedman, Chartered, hereby certify that a copy of the foregoing Response was hand delivered, on this 29th day of March, 1995, to the following:

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